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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,515	01/31/2002	Majid Zia	I-14873	3658
1678	7590	05/06/2005	EXAMINER	
MARSHALL & MELHORN FOUR SEAGATE, EIGHT FLOOR TOLEDO, OH 43604			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,515

Applicant(s)

ZIA ET AL.

Examiner

Patrick F. Brinson

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 20-41 and 44-58 is/are pending in the application.
- 4a) Of the above claim(s) 1-14, 16, 26-30 and 44-48 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-25 and 36 is/are allowed.
- 6) ☒ Claim(s) 15, 31-35, 37-41 and 49-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3,897,923 to **Paepke et al.**

The patent to **Paepke et al.** discloses a tubing device comprising a curvilinear channel (34) disposed there in for receiving a piece of tubing (14) and a means (36) for holding the piece of tubing within the channel, as recited in claim 15. Fig. 3 discloses the channel having a cross-section with a greater than semi-circular cross section. **Paepke et al.** does not disclose the tubing as being “intravenous” tubing, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

2. Claims 15, 31, 33-35 and 37-41 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,113,039 to **Riffle**.

The patent to **Riffle** discloses a weight bearing tube support device comprising a curvilinear channel (15) disposed there in for receiving a piece of tubing (11) and a collar (24) for holding the piece of tubing in the channel. The channel has a semi-circular cross section, and the collar has a greater than semi-circular cross section, as recited in claim 19. The support device comprises opposing faces and a circumferential edge with the curvilinear channel comprising a trough disposed along a portion of the circumferential edge, as recited in claim 33. The device is in a form designed to accommodate fluid delivery hoses.

The lower portion (14) includes a circular fixed pulley that acts as a bending die having a radius of curvature greater than the kink radius that would cause the hose to kink or crimp. The hose is adjustable within the support structure.

Riffle does not disclose the tubing as being “intravenous” tubing, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

3. Claims 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3,860,978 to **Wirth**.

The patent to **Wirth** discloses a kink resistant tubing comprising at least two parallel channels (29) through the support member for retaining tubing (11) and structure to support the weight of the tubing apparatus without substantially deforming tubing retained by the support member. When viewing the support member in fig. 1, it has a substantially rectangular cross section, as recited in claim 51 and the member includes a through hole (26), as recited in claim 52. The through hole is substantially perpendicular to the two channels, as recited in claim 53.

4. Claims 49, 50 and 54-57 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,311,936 to **Herr et al.**

The patent to **Herr et al.** discloses a kink resistant tubing, figs. 8 and 9, comprising at least two parallel channels through the support member for retaining tubing (66) and structure to support the weight of the tubing apparatus without substantially deforming tubing retained by the support member. The support member includes a flexible curved portion (64) between the two channels, as recited in claims 54-57.

5. Claims 49, 50 and 54-58 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 4,151,864 to **Thurman**.

The patent to **Thurman** discloses a kink resistant tubing, fig. 1, comprising at least two parallel channels through the support member for retaining tubing (12) and structure to support the weight of the tubing apparatus without substantially deforming tubing retained by the support member. The support member includes a curved supporting portion (28). Col. 2, lines 22 and 23 discloses that the material of which the device is made of is flexible and and semi-rigid material.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Paepke et al.** in view of US. 955,342 to **Maxwell**.

Paepke et al. discloses the recited structure, as discussed in preceding paragraph # 1, including a hook (38) or “other suitable means” for supporting the device to an overhanging support, but does not specially disclose an aperture. The patent to **Maxwell** discloses a tube support device comprising a curvilinear channel

disposed there through for receiving a piece of tubing (3) and means, including bends (11) and ear (12) for holding the piece of tubing in the channel. The support device including aperture (13) for hanging the tubing device to structure (7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute for the hook of **Paepke et al.** an aperture, as suggested by **Maxwell** in order to provide an alternative means of supporting the support structure and hose to an overhanging device.

Response to Amendment

7. Applicant states that neither the **Paepke et al.** or the **Riffle** reference discloses the tubing as an intravenous tubing and therefore the references cannot be used to reject the claims. As stated in the preceding paragraphs, structurally, the claimed limitations are disclosed by **Paepke et al.** and **Riffle**. The fact that the support member supports an intravenous tubing does not make it patentably distinct from other tubing support devices. Applicant correctly points out that the **Riffle** reference does not disclose two channels. Therefore new rejections have been made with **Herr et al.**, **Wirth** and **Thurman**, wherein these references disclose tubing supports having two parallel channels that are parallel to each other. Likewise the 103 rejections of claims 51-53 and 57 in view of **Riffle** have been dropped in view of the new rejections. In response to the **Maxwell** reference stating that the cross-section of the

channel is semi-circular, the rejection of claim 32 has been changed to 103 wherein it would be obvious to substitute the hook of **Paepke et al.** with an aperture as suggested by **Maxwell** in order to hang the apparatus to a support device.

Allowable Subject Matter

8. Claims 20-25 and 36 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patrick F. Brinson
Primary Examiner
Art Unit 3754

P. F. Brinson
May 2, 2005